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### Prefatory Note.

In connection with the accession of States to Federation, it has been felt that it would help Political officers considerably if they were in a position to explain to the States where necessary, in the course of individual negotiations, both the legislative and executive scope of the various items in List I of Schedule VII of the Government of India Act of 1935, and the machinery that would be required in the States for the satisfactory discharge of Federal obligations. An explanatory memorandum has accordingly been prepared on items in regard to which special explanations have been felt to be necessary. The memorandum is meant only for the confidential enlightenment of Political officers dealing with Federal negotiations, and for use in giving informal and friendly explanations and advice to States which may ask for enlightenment on the scope and implications of any item in the Federal Legislative List, and not for general communication to States. The special attention of Political officers is invited to the following important points :—

- (1) The precise theoretical range and scope of any item in the Federal Legislative List, whether or not it is limited by an Instrument of Accession, can be authoritatively defined only by the Federal Court in virtue of its powers under Section 204 of the Government of India Act, 1935, with an appeal to the Privy Council, no other authority being competent to define authoritatively Federal items. Moreover, it should be remembered that any description which might be given of the views of the present Government of India as to the consequence of the acceptance of any particular subject as federal might not necessarily be an accurate forecast of the views of a Federal Government. In view of all this, it is most important that any information as to the probable scope of any item would necessarily have to be given by Political officers with the greatest reserve and Political officers should not give anything in the way of explanation to States which they could afterwards claim as an undertaking as to what would ensue from their acceptance of any given item. The most that could be said would be what the items are held to cover now for the purpose of British India (*vide* portions of Memorandum printed in ordinary type), and the States must be left to draw their own deductions as to what could be done in the Federating States by the Federal Government under each. It will also have to be made quite clear that any information as to the scope of any item which is given to the States to help them in considering the Instrument of Accession is not to be taken as anything more than friendly guidance as to what the Government, as at present advised, believe the position to be and Political officers are warned against committing themselves to any assurance in replies to States which would in fact go beyond such guidance.
- (2) No existing central legislation on the subjects accepted by the States can be extended to the States, beyond the very limited range in which it at present applies, without a new Act of the Federal Legislature in which the Federating States will participate; the question of what legislation should be so extended in the early days of Federation is a matter which has hardly yet been examined, and can in any case only be finally determined by the Federal Ministry and Federal Legislature. Similarly the precise degree of executive authority to be exercised in States remains to be determined by competent authority after the inauguration of Federation.
- (3) Whatever legislation may be applied at the outset by the new Federal Ministry and the Federal Legislature, nobody can now forecast the quality or range of further legislation by these authorities beyond the fact that it must fall within the scope of the Federal Legislative List as interpreted by the Federal Court.

2. In view of the above position, extreme caution will be required in handling the material provided in the memorandum especially the portions printed in italics ; which should on no account be communicated verbatim.

3. It is quite clear from the Act—see in particular Sections 6 (2), 8 (1)—proviso (ii), and 101 that the limitations imposed by the Instrument of Accession on the executive authority and legislative power of the Federation can only be limitations on the exercise of that authority or power in or for the Federating State ; they cannot be limitations on the executive authority of the Federation in British India or in any other State, or on the legislative power of the Federation for British India or for any other State. This point will have to be borne in mind in dealing with any reservations which States may put forward which contravene the above principle. The manner of meeting the objections of any States under this head will be discussed in a separate communication.

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### Item 1.—Central Intelligence Bureau.

*Should any State raise the question of its relations with the Central Intelligence Bureau under Federation, it may be told that it will be asked to agree to an arrangement whereby it will supply the Bureau with any information which is likely to be of interest as regards the tranquillity of any part of India outside its territories, in return for an undertaking from the Bureau to provide it with any information likely to affect the tranquillity of that State.*

*The Central Intelligence Bureau will be prepared to exchange information and co-operate with any State which satisfies the Bureau that it possesses an Intelligence system :—*

- (a) that is capable of maintaining secrecy when this is demanded ; and*
- (b) that can furnish the Bureau with accurate and properly digested information on subjects in which the Bureau may be interested.*

*In connexion with the second condition, it may be mentioned that the Bureau is interested in certain types of ordinary crime, and it also takes an interest in all movements, whether political or not, which may lead to disorder ; for disorder in one Province or State may spread to another.*

*In practice, the Central Intelligence Bureau would have to require a degree of efficiency similar to that now attained in British Indian Provinces and Administrations before complete co-operation could be accorded.*

*States should be left to raise the question themselves.*

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**Item 3.—The implementing of treaties and agreements with other countries.**

**Commercial treaties and conventions.**

*The present position of Indian States in regard to commercial treaties and multilateral conventions with foreign countries is that as they have no external status, the Government of India as the paramount power decide whether they should be included in such treaties, etc., or not. The States are, under present conditions, automatically included in simple bilateral treaties which guarantee generally most-favoured-nation treatment in respect of goods. In the case of detailed bilateral treaties which deal not only with the treatment of goods but also with subjects, companies, etc., the practice of the Government of India is that if the States are not consulted and it is decided to adhere to such a treaty on behalf of India, a reservation is generally made in respect of the laws of individual States and the powers inherent in their Rulers.*

*In the case of multilateral conventions concluded on behalf of India under the auspices of the League of Nations, Indian States are not included without their consent.*

*2. The position of Indian States in respect of commercial treaties and International conventions after their accession to the Federation will differ from what it is at present. If the States accept as federal without limitation the subject-matter of the treaties (as set out in the exclusively Federal Legislative List), or if the Ruler of a State agrees to the application of any treaty or convention to his territory, the treaties and conventions will apply ipso facto to the States who will have to give effect to them within their territories.*

*3. Many of the International conventions have to be implemented by legislation and some involve the employment of technical staff to give effect to them, but the scope of the legislation and the machinery required can be detailed only with reference to a particular convention.*





### Item 5.—Currency, Coinage and legal tender.

At present in British India the following Acts of the Indian Legislature regulate this subject :—

The Indian Coinage Act, 1906.

The Reserve Bank of India Act, 1934.

These two Acts ensure the circulation of British Indian currency throughout British India.

2. The more important functions performed by the Currency authorities under these Acts may be briefly summarised as follows :—

- (i) To issue notes and coin and to give free facilities at the Currency offices for the exchange of one type of currency for another and as free facilities as possible throughout the country.
  - (ii) To preserve the international value of the currency by offering on the one hand to give that currency in unlimited quantities at a stated price in exchange for gold (or sterling), thus preventing its value rising too high and on the other hand, to sell it in exchange for gold or sterling at a lower limit, thus preventing it going too low.
  - (iii) In addition they undertake important duties which involve a certain amount of expense, such as the withdrawal of worn coin, or dirty or damaged notes, and the provision of cheap remittance facilities between one part of India and another (including many Indian States) whereby parties tendering currency at one place get draft or telegraphic transfer at very low rates of commission, authorising them or their nominees to draw out an equal amount at another place.
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**Item 7.—Posts and telegraphs including telephones, wireless, broadcasting, and other like forms of broadcasting ; Post Office Savings Bank.**

**A.—The law in British India relating to Posts and Telegraphs.**

1. **Post Offices.**—The working of the Indian Post Office is governed by the Indian Post Office Act of 1898 (Act VI of 1898) as amended from time to time, and by the Rules framed thereunder known as the Indian Post Office Rules, 1933. Under Section 4 of the said Act, the Governor General in Council has the exclusive privilege (except in certain cases specified therein) of conveying by post from one place to another all letters and also of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters. The Governor General in Council has also the power to fix the postage and other sums to be charged in respect of postal articles and to prescribe the conditions for their transmission through the post. (Sections 7, 10, 18—48.)

In addition to the purely postal functions the work in connection with the Post Office Savings Bank and Post Office Cash Certificates is done in Post Offices on behalf of the Finance Department of the Government of India. The working of these branches is governed by the Government Savings Bank Act, 1873 and the Post Office Cash Certificates Act, 1917.

2. **Telegraphs, Telephones, Wireless, etc.**—The Indian Telegraph Act, 1885 (Act No. XIII of 1885) as amended from time to time and the Rules framed thereunder known as the Indian Telegraph Rules, 1932 govern the working of the Telegraph Branch of this Department. Section 4 of the Act gives the Governor General in Council the exclusive privilege of establishing, maintaining and working of the Telegraphs which term includes telephones and wireless. Section 7 of this Act gives the Governor General in Council power to make rules consistent with the Act for the conduct of all or any “telegraphs” established, maintained or worked by the Government or by persons licensed under this Act. All wireless stations established by Provincial Governments are under this Act licensed by the Director General of Posts and Telegraphs under the powers delegated to him by the Governor General in Council.

As regards broadcasting, technical control at present remains with the Central Government. The existing Telegraph Act gives no power to delegate the issue of licenses to Provincial Governments. It is considered essential that licenses should be granted only by the Government of India for the avoidance of interference and observance of International Conventions. The Indian Wireless Telegraphy Act, 1933, regulates the possession of wireless apparatus in British India.

**B.—The form of administration of Posts and Telegraphs, etc., in British India.**

The Indian Posts and Telegraphs Department is subordinate to the Industries and Labour Department of the Government of India, which is responsible for guiding the Director General, Posts and Telegraphs on questions of policy.

The Posts and Telegraphs Department is administered by the Director General of Posts and Telegraphs. For purposes of administration, India is divided into 9 Posts and Telegraphs circles, 8 of which are each in charge of a Postmaster-General and one in charge of a Director of Posts and Telegraphs. For purposes of executive control each circle is divided into Divisions in charge of Divisional Officers.

**C.—Effect of Federation.**

Indian States would be treated in the same manner as the autonomous British Indian Provinces in matters postal and telegraphic (including telephones and wireless).

*The question how existing postal, telephone and telegraph (including wireless) systems of States should be treated under the Federation will form the subject of negotiations with the States concerned.*



**Item 11.—The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any similar institutions controlled or financed by the Federation.**

The institutions mentioned above and other similar institutions are at present maintained by the Government of India and will continue to be maintained by the Federation.

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**Item 12.—Federal Agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.**

The Government of India at present maintains the following institutions:

1. The Imperial Institute of Agricultural Research, and its sub-stations.
2. The Imperial Institute of Veterinary Research, Muktesar and its sub-stations at Izatnagar.
3. The Forest Research Institute and College, Dehra Dun.

The work carried on at these institutions is of all-India importance and they will continue to be maintained by the Federal Government.

2. The institutions for public health work under the Government of India at present are :—

1. The Central Research Institute, Kasauli.
2. The All-India Institute of Hygiene and Public Health.
3. The Medical Research Department.

The Central Research Institute, Kasauli, manufactures and imports various curative sera and prophylactic vaccines for supply to civil and local fund institutions and to Indian States. It affords facilities for training in laboratory technique both to medical officers of British India and Indian States.

The All-India Institute of Hygiene and Public Health, Calcutta, provides opportunities for expert study in Public Health, *viz.*, public health administration, biochemistry and nutrition epidemiology and vital statistics, malariology and rural hygiene and maternity and child welfare. The institute provides courses for the D. P. H. of the Calcutta University and the D. P. H. and Hygiene of the Bengal Faculty of Tropical Medicine ; the Doctorate of Science (public health) of the Calcutta University ; diploma in maternity and child welfare and special courses.

The Medical Research Department is meant to provide an efficient staff of bacteriologists and trained research workers for investigating problems of disease anywhere in the country.

3. The Indian School of Mines at Dhanbad, which is financed and administered by the Government of India, falls under this category. The School was established with a view to enabling Indians to qualify themselves for appointment in the Geological Survey of India and the Department of Mines and to meet the growing needs of the mining industry for trained mine managers and geologists. The School is open to students from all parts of India and Burma (including Indian States), who comply with the regulations for admission. Fifty per cent. of the admissions to the School has been reserved for the various Provinces and the Indian States of Hyderabad and Mysore ; the remaining admissions are open to the best candidates without regard to domicile. The present policy in regard to the admission of students to the Indian School of Mines against the unreserved quota makes no discrimination between students belonging to British India and Indian States. The claim of Federating States to special consideration in the matter of reservation can only be considered in due course.

4. This entry merely empowers the Federal Legislature to deal with existing institutions or new ones which the Federal Government may decide to create, and makes the expenditure connected with the activities falling under this item a Federal charge.





**Item 14.—The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations.**

**The Survey of India.**

**A.—Functions.**

At present the Survey of India is controlled by the Surveyor General who is under the administrative control of the Government of India in the Department of Education, Health and Lands.

For topographical purposes India, excluding Burma, is divided into 4 survey of India Circles. Three of these areas, namely, the Frontier Circle with headquarters at Simla, the Geodetic Branch with headquarters at Dehra Dun and the Eastern Circle with headquarters at Shillong, are each under a Director and the 4th, that is, area South of latitude 18 degrees, is an independent party area under the Officer in charge No. 6 (South India) party with headquarters at Bangalore. In the Frontier circle the parties are organised as Field Survey Companies, viz., "A" Company, "E" Company and No. 18 Party (Air Survey). These units carry out their duties as ordinary parties in peace time, but are trained with a view to co-operating with the Army in War.

2. The mapping of the field work is done by the parties responsible for the survey. Compiled mapping on smaller scales is carried out from maps of the larger scales for India and from exploratory surveys, etc., for all countries adjacent to India in the Circle Drawing Offices.

3. In addition to the topographical work of his circle, the Director, Geodetic Branch, undertakes the preparation and printing of cantonment and forest maps. He is also responsible for all the scientific work of the Department, including base line, principal triangulation, geodetic levelling, pendulum, astronomical, magnetic, seismographic and meteorological observations, computing work and tidal prediction for 40 ports of the Indian Ocean.

4. The Survey Committee of 1905 laid down certain normal scales of survey for all India and Burma based on the probable civil and military requirements of each particular area. These normal scales of survey are  $\frac{1}{4}$  inch,  $\frac{1}{2}$  inch and one inch to one mile.

Subject to the approval of the Provincial Governments or in the case of Indian States, of the Darbars concerned, topographical surveys on these scales are carried out in accordance with the programme approved by the Government of India.

**B.—Effect of Federation.**

*Under Federation the cost of all such normal scale surveys either in Provinces or in Federated States which have accepted item 14 will be met by the Central Government without charge to the Provinces or Federated States in whose area the survey takes place.*

*For all topographical surveys on scales larger than the "normal", the full cost will be met by the Province or Federated State requiring such larger scale survey, but a rebate will usually be allowed if such larger scale survey is of value and can be utilised for purposes of survey and mapping on the normal topographical scale.*

**Botanical and Zoological Surveys.**

The Botanical and Zoological Surveys of India are at present maintained by the Government of India and will be maintained by the Federal Government.

**Geological Survey.**

The primary function of the Geological Survey is to investigate and estimate the mineral resources of India. The fundamental work underlying such investigations is a thorough comprehension of the geological structure of the country and for this purpose a systematic field geological survey is undertaken and geological maps are prepared. The regular field work of the Department is supplemented by work at headquarters involving the study of specimens, completion of field maps and the writing of reports. The results of mineralogical and petrographical study often require confirmation by chemical investigation which necessitates the provision of a chemical laboratory in which also are examined specimens of minerals, ores and rocks, sent in by the public for determination. After study, the specimens collected in the field are stored in

the Indian Museum, for future reference, to which the public (including students) have access. In all branches of Geological work, it is necessary to compare new results with those previously obtained both in India and abroad and for this purpose a library is maintained in the Department. The results of the investigations and researches of the Department are published in three series of publications, *viz.*, Records, Memoirs and Paleontologia Indica. The Department in addition to investigation of mineral resources also advises Central and Local Governments on engineering problems, *e.g.*, water supply, location of dam-sites, earthquakes, landslips, etc.

The operations of the Department extend to the whole of India including Indian States. At present geological operations are carried on in the Indian States as a matter of courtesy. Prior notice is given of the survey work to be undertaken in a State territory and the Durbar concerned is asked to arrange for the necessary facilities being afforded to the survey party.

## India Meteorological Department.

### Functions and organisation.

1. The India Meteorological Department was instituted in 1875 to combine and extend the work of various provincial meteorological services which had sprung up before that date. The various duties which were imposed on the Department at the time of its formation were from time to time supplemented by new duties. The main existing functions, more or less in the historical order in which they were assumed, may be briefly summarised as follows :—

- (a) The issue of warnings to ports and coastal districts of the approach of cyclonic storms.
- (b) The issue of storm warnings by wireless to ships in the Indian seas, and the making of arrangements for the collection of meteorological data from ships.
- (c) The maintenance of systematic records of meteorological data and the publication of climatological statistics. These were originally undertaken in order to furnish data for the investigation of the relation between weather and disease.
- (d) The issue to the public of up-to-date weather reports and of rainfall forecasts. These duties were originally recommended by a Committee of Enquiry into the causes of famine in India.
- (e) Meteorological researches of a general character, but particularly regarding tropical storms and the forecasting of monsoon and winter rainfall.
- (f) The issue of seasonal rainfall forecasts.
- (g) The issue of telegraphic warnings of heavy rainfall by special telegrams to district officers on Departmental warning lists (*e.g.*, canal and railway engineers), and by means of the ordinary daily weather telegram to the public in general.
- (h) Supply of meteorological, astronomical and geophysical information in response to enquiries from officials, commercial firms or private individuals.
- (i) Technical supervision of rainfall registration carried out under the control of Provincial Government authorities.
- (j) The study of temperature and moisture conditions in the upper air by means of instrument-carrying balloons and of upper winds by pilot balloons.
- (k) The issue of weather reports and warnings to aircraft, civil and military, the latter being in collaboration with the Royal Air Force.
- (l) The training and examination in meteorology of candidates for air pilots' licenses.
- (m) Study of meteorology in relation to Agriculture.

In addition to these meteorological duties the India Meteorological Department was from time to time made responsible for or undertook various other important duties, such as—

- (n) determination of time in India and the issue of time-signals, also the determination of errors of chronometers for the Royal Indian Navy ;
- (o) observations and researches on terrestrial magnetism at Bombay and atmospheric electricity at Bombay and Poona.
- (p) regular study (mainly by spectroscopic examination) of the sun at the Solar Physics Observatory at Kodaikanal ; and
- (q) maintenance of seismological instruments at various centres.

2. The Department at present manages over 300 observatories of all classes. In addition there are about 60 non-departmental observatories which are maintained in Indian States and by certain public authorities in British India. When an observatory is established in an Indian State, the building is ordinarily constructed and maintained by the State and the staff are paid by the State. The Department assists by supplying instruments, technical supervision and funds for the payment of the telegraph charges on weather messages. The records of the observatories in the States are scrutinized by the Department and are used in the compilation of daily weather reports and other publications. There may be exceptions to these general arrangements in individual cases, but on the whole the arrangements in the States are as described above. Many States render most valuable assistance, notably Bahawalpur, Baroda, Bhopal, Bikaner, Cooch Behar, Hyderabad, Jaipur, Jhalawar, Kashmir, Miraj, Mysore, Nawanagar and Travancore.

#### Effect of Federation.

3. *It seems likely that the position will be unchanged. The Federal Meteorological Department will operate precisely as the India Meteorological Department operates at present. If any State wishes to make special arrangements after joining the Federation, it could presumably do so at its own expense, but the Federal Department would meet all reasonable needs.*

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**Item 15.—Ancient and Historical monuments ; archæological sites and remains.**

At present the functions of the Archæological Department which deals with the ancient and historical monuments and archæological sites and remains, etc., in British India are (i) exploration, including excavation, (ii) conservation of ancient and historical monuments, and (iii) control of the movement of 'antiquities' [which are defined in the Ancient Monuments Preservation Act, 1904 (VII of 1904) as including "any movable objects which the Government by reason of their historical or archæological association, may think it necessary to protect against injury or removal or dispersion"]. Such powers as the law has provided for the discharge of these functions are to be found in the Ancient Monuments Preservation Act, 1904.

*If States accept this item, the operations of the Federal Archaeological Department will also embrace the Federated States. But it is permissible to entrust the administration of the subject to Federating States with or without conditions, vide section 124.*

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**Item 17.—Admission into, and emigration and expulsion from India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom.**

**A.—Legislation and Administration in British India.**

The admission into British India of all persons, whether British subjects or foreigners, is controlled by the Indian Passport Act, 1920, and the Rules made thereunder. The work arising under the Act relates largely to the recognition of passports of persons entering British India. Persons entering British India in contravention of the Act can be deported under the provisions of section 5 of the Act.

As regards the regulation of the movements of persons in British India, the existing law, namely, the Foreigners Act, 1864, only gives powers in respect of foreigners. Under section 3 of that Act, foreigners who make themselves objectionable can be expelled from British India. No restrictions are placed on the movements of foreigners ordinarily, but sections 5 *et seq* provide for this in an emergency, *e.g.*; on the outbreak of war. In a time of emergency the bringing into force of the provisions of sections 5, etc., would involve a system of registration and licensing of foreigners.

**B.—Effect of Federation.**

*Acceptance of the matters specified in this item as matters with respect to which the Federal Legislature may make laws for his State will in no way fetter the Ruler's freedom of action in respect of admission to or removal from the State of persons who are British subjects domiciled in India, subjects of any Federated State or British subjects domiciled in the United Kingdom. In respect of admission to or removal from the State of other persons, the Ruler's freedom of action will be fettered only by an obligation to implement the requirements of any Federal Law enacted in relation to admission of such persons into or their emigration or expulsion from India, and it is prima facie most improbable that a Federal Law enacted in relation to these matters will place any restriction on the competence of units to refuse admission to or removal from the units.*

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**Pilgrimages to places beyond India.**

The Government of India are at present concerned with Haj pilgrimage to Holy places in the Hejaz and with pilgrimages to Holy places in Iraq and Iran.

**A.—The Law and Administration in British India.**

The British Indian legislation consists of the Merchant Shipping Act, 1923 and the Port Haj Committees Act, 1932.

The ports of Bombay, Karachi and Calcutta have been declared as pilgrim ports under section 150 of the Merchant Shipping Act, 1923 and under section 3 of the Port Haj Committee Act, Port Haj Committees have been set up in these ports to assist out-going and returning pilgrims and perform certain other duties connected with the pilgrim traffic. At present pilgrim ships do not sail from or return to any port in any Indian State.

Pilgrims proceeding to the Holy places in Iraq and Iran by the sea or overland route are required to take out 'pilgrim passes' issued by the Passport issuing authorities.

**B.—Effect of Federation.**

*The acceptance of this part of item 17 will not involve any special obligations. If in future any Federating State desires to throw open any of its ports to pilgrim traffic, it will have to take steps to control this traffic in accordance with the provisions of the relevant Federal law.*





**Item 18.—Port Quarantine, Seamen's and marine hospitals and hospitals connected with Port Quarantine.**

Port Quarantine exists for two reasons, viz. (i) the fulfilment of international requirements in order to avoid the harassment of shipping and interference with commerce ; and (ii) the protection of the country against the introduction of diseases from outside. The latter is more important so far as India is concerned.

At present Port quarantine policy and legislation in British India are based on International Sanitary Conventions to a large extent and are designed to prevent the spread of infection arising from international sea traffic and to a less extent from inter-coastal traffic. Articles 14 and 51 of the International Sanitary Convention, 1926, give an idea of the scope of the obligations resting on the Governments of the countries ratifying the convention and although British India has not yet formally acceded to the convention, it is regularly working up to it. The requirements of this convention in regard to major ports ~~are~~ <sup>are</sup> very stringent. (*Vide* Articles 14 and 51 of the Convention.) As regards other ports, the Convention merely states that Governments shall as far as possible maintain sanitary services, that is, the minor ports of British India or at any rate the majority of them need only have such staff and equipment as is necessary for dealing with healthy ships, and need not be provided with elaborate arrangements required for dealing with infected or suspected ships which should be sent to one of the bigger ports equipped for their reception.

**Effect of Federation.**

*If the International Sanitary Convention of 1926 is ratified by the Federal Government, it would be necessary to comply with the requirements of the Convention at the important ports in Indian States ; for the purposes of the Convention it is likely that only a port declared by the Federal Government to be a major port would be termed an important port. Presumably the obligations on States arising out of their acceptance of item 18 would be :—*

- (i) to follow the same procedure at major ports in States as is prescribed from time to time for British Indian ports. The present rules are more or less in conformity with the International Sanitary Convention of 1912, but are being revised and brought into line with the provisions of the Convention of 1926, as far as possible ;*
- (ii) to vest the Federal Government with the power of appointing Port Health officers at their principal ports or to make such appointments themselves in consultation with the Public Health Department of the Federal Government ;*
- (iii) to keep the organisation necessary although on a modest scale, under the Convention if ratified, for deratisation and to take steps to minimise rat population ;*
- (iv) to provide organised medical service and equipment for the transport of the sick, isolation, disinfection, etc. ;*
- (v) to submit a weekly statement showing for its major port towns, cases and deaths from cholera, small-pox, plague, yellow fever, cerebro-spinal meningitis, influenza, etc., and a brief annual report giving the health conditions in such towns ;*
- (vi) to maintain in their large ports and in their surroundings and as far as possible in other ports and their surroundings sanitary organisation and equipment capable of carrying out the application of prophylactic measures in regard to diseases mentioned in the International Sanitary Convention and especially the measures laid down in Articles 6, 8 and 13 ; and generally ;*
- (vii) to conform to the International Sanitary Convention, 1926 if ratified by the Federal Government.*

*In the case of inter-coastal traffic the States may be required to co-operate with the Federal Government in the procedure for the notification of ports as infected or free ; the supply of weekly epidemiological information regarding their ports.*



19. Import and export across customs frontiers as defined by the Federal Government.

44. Duties of customs, including export duties.

A.—Legislation in British India.

The following are the British Indian Acts dealing with these subjects :—

1. Indian Sea Customs Act, 1878.
2. Indian Land Customs Act, 1924.
3. Indian Tariff Act, 1934.
4. Indian Salt (Additional Import Duty) Act, 1931.
5. Indian Tea Cess Act, 1903.
6. Indian Cotton Cess Act, 1930.
7. Indian Lac Cess Act, 1930.
8. Dangerous Drugs Act, 1930 (provisions relating to import and export).
9. Indian Tea Control Act, 1933.
10. Indian Rubber Control Act, 1934.
11. Indian Coffee Cess Act, 1935.

The following Provincial Acts will also continue in force as Federal Acts if they are not repealed before the inception of the Federation in consequence of an expansion of the Indian Land Customs Act :—

1. Madras Land Customs Act, 1844.
2. Bombay Land Customs Act, 1857.

B.—Effect of Federation.

*The acceptance of these items by a State would involve on the legislative side the replacement of State legislation on these subjects by Federal legislation and on the administrative side the use of a Federal agency for the administration of the law. In practice, however, it may be possible for the maritime States to use their own agency for this purpose provided that they are prepared to accept the following minimum demands :—*

- (a) *that they adopt the Federal law and procedure and accept the ultimate control of the Federal Chief Customs Authority and the Government of India, and (if the Federal law should in future provide for the intervention of the Courts) of the Federal Court ;*
- (b) *that they allow their accounts and records to be subjected to audit conducted by the Auditor-General in the same way as he audits the accounts and records of British Indian Customs officers ; and*
- (c) *that the whole of the collections are promptly paid into the Federal exchequer, subject only to the deductions of—*
  - (i) *an amount agreed by the Federal Government as representing the cost of collection ; and*
  - (ii) *any specific amounts provided for in the Instruments of Accession.*

*It should be remembered that these remarks also apply to States on the external land frontiers of India, such as Savantwadi (on a frontier where there is already a land customs régime) and Kalat, Kashmir and Sikkim (on frontiers where there may be such a régime in future).*



**Item 20.—Federal Railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.**

**A.—Legislation and Administration in British India.**

The present British Indian legislation on this subject consists of the Indian Railways Act, 1890, and the Railway Board Act, 1905.

The Government of India in the Railway Department (Railway Board) exercises such of the powers in regard to the construction, equipment and operation of railways, as are necessary to secure the safety both of the public and of the staff employed in operating railways, including the holding of enquiries into the causes of accidents. In addition the Railway Board exercises powers in respect of the following matters :

- (a) prescribing the maximum and minimum fares and rates for coaching and goods traffic, within which Railways may alter their fares and rates ;
- (b) the determination of the principles on which terminal charges may be based and/or the quantum of such charges ;
- (c) prescribing the principles which should govern the routing of traffic, and/or decide in special cases the route to be followed having regard to conflicting interests ;
- (d) prescribing the procedure to be followed to facilitate the inter-change of traffic between railways ;
- (e) the determination of the conditions under which all descriptions of traffic will be carried, and generally regulate the travelling upon, use, working and management of the railway so as to facilitate through booking to and from connected railways.

**B.—Effect of Federation.**

*The Federal Railway authority to be constituted under section 182 of the Act shall exercise the powers now exercised by the Railway Board: If a Federated State has reason to believe that any direction given to it by the Federal Railway Authority discriminates unfairly against the railways of the State or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, it is open to the State, under section 194 of the Act, to complain, and such complaint shall be determined by the Railway Tribunal constituted under section 197 of the Act.*

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**Item 21.—Maritime Shipping and Navigation, including Shipping and Navigation on tidal waters.**

**A.—Legislation and Administration in British India.**

Broadly speaking, the subject covers the control of vessels, other than ships of war, which proceed to sea. The control is directed mainly towards ensuring the safety of ships and their cargo and the safety, comfort and well-being of persons on board them.

The main body of the law relating to merchant shipping in British India is

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| 1. The Bombay Coasting Vessels Act, 1838.                            | contained in the Indian Acts noted in the margin as well as in the Merchant Shipping Acts of the British Parliament, |
| 2. The Indian Registration of Ships Act, 1841.                       | certain portions of which apply to British India. These Acts sufficiently indicate the                               |
| 3. The Indian Registration of Ships Act (1841), Amendment Act, 1850. | scope both legislative and executive of this   |
| 4. The Indian Coasting Trade Act, 1850.                              | subject in British India at the present  |
| 5. The Indian Sea Passengers Act, 1885.                              | day.   |
| 6. The Indian Merchant Shipping Act, 1923.                           |  |

The administration of the subject in British India was, prior to the 1st April 1929, on a provincial basis, each local Government being responsible subject to the supervision, direction and control of the Government of India, for the administration in its own province. In 1929 the administration was centralised and a technical advisory staff was appointed at headquarters to assist the Government of India in the administration. The coasts of British India have been divided, for the purposes of mercantile marine administration, into six districts based on the major ports of Aden, Karachi, Bombay, Madras, Calcutta and Rangoon, and each district has been placed in the charge of a senior officer of the Royal Indian Navy (whose services are for the time being placed at the disposal of the Commerce Department of the Government of India) designated 'Principal Officer'. It is only at the ports referred to and at the other major ports of Chittagong and Vizagapatam that there are Central Government officers. At other ports, that is, minor ports the officer of the Provincial Government in charge of the Port (*i.e.*, the Port Officer) carries out on behalf of the Central Government and subject to their supervision, direction and control, the small amount of Central mercantile marine work arising at the port, and, in connection with that work corresponds direct, and not through the provincial Government, with the Principal Officer of the District in which the minor port is situated.

**B.—Effect of Federation.**

*As maritime shipping and navigation is of international importance and its administration involves international obligations, uniformity in legislation and policy throughout Federal India would undoubtedly be desirable, and acceptance of this item by the States would imply—*

- (i) *that Federal Laws would extend to the States in supersession of any law on the subject in force in the State which is repugnant to the Federal Laws ; and*
- (ii) *subject to any limitations imposed in the States' Instruments of Accession, the control of policy as regards merchant shipping and navigation would also vest in the Federal Government [section 8 (1) read with section 6 (2) of the Act].*

*The extent to which administration of the subject can be left in the hands of the States and its officers, and the existing powers and rights of the States in regard to this subject can be continued, are matters which will have to be considered at the time of actual negotiations for accession.*





## Item 21.—Admiralty jurisdiction.

The existing British Indian Legislation consists of the Colonial Courts of Admiralty (India) Act of 1891 read with the Colonial Courts of Admiralty Act, 1890.

### Effect of Federation.

If a State were to federate both for Admiralty jurisdiction and for Item 53 of the Federal Legislative List, there would be no doubt that jurisdiction as respects its ships could be validly given to British Indian Courts by the Federal Legislature. What the effect of federating for Admiralty jurisdiction alone would be is far from clear, but it seems probable that the State's ships would *vis-à-vis* British Indian Courts be in same position as foreign ships. If on the other hand a Federated State were to accept neither "Admiralty jurisdiction" nor Item 53 as Federal subjects the position would appear to be, in spite of the terms of S. 99 (2) (c) of the Government of India Act, 1935, that the State's ships (like the ships of a non-Federated State) would be, in relation to British Indian courts, in the same position as foreign ships.

As regards the powers of the Federal Legislature in relation to the Courts in a State, it clearly could not confer Admiralty jurisdiction on a State court if the State had federated neither for Admiralty jurisdiction nor for Item 53. Here also the position would be obscure if the State federated for Admiralty jurisdiction only, but on the whole in that case it seems probable that the Federal Legislature could not affect any court in the State.

*The conclusion appears to be that in practice no useful purpose would be served by any State's accepting either "Admiralty jurisdiction" or item 53 (so far as it relates to Admiralty Jurisdiction) as Federal subjects, at all events in the initial stages of the Federation.*



**Item 22.—Major Ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.**

**A.—Legislation and Administration in British India.**

The administration of the subject in British India is regulated by the Indian Ports Act, 1908, and the various Port Trust or Port Acts, like the Calcutta Port Act, which are acts of the Provincial Legislatures. The statutory powers under these acts are chiefly vested in the Local Governments subject to the supervision, direction and control of the Governor-General in Council. The subject "Major Ports" was declared a central subject in 1922, but for the sake of administrative convenience the Local Governments have been allowed to exercise powers in regard to them as agents of the Government of India, except in respect of certain ports.

2. The administration of major ports is usually carried on by a corporate body described as the Commissioners (or Trustees) for the Port subject to control in certain matters by the Local Governments as agents of the Government of India.

**B.—Effect of Federation.**

The federalisation of the subject involves, so far as British India is concerned, the assumption by the Federal Government of the statutory powers at present vested in Local Governments, and it is possible that eventually it may be necessary to repeal all the existing Acts and re-enact them in the Federal Legislature. *If the item is accepted by the States in their Instruments of Accession and any of their ports is declared a major port, legislation will have to be undertaken in the Federal legislature and all powers in respect of that port will be vested in the Federal Government and not in the State concerned. All local legislation in force in the State concerning the administration of the port will cease to have effect.*

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**Item 24.—Aircraft and air navigation ; the provision of aerodromes ; regulation and organisation of air traffic and of aerodromes.**

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**Item 25.—Provision for the safety of aircraft :—**The law is contained in the Indian Aircraft Act, 1934 (XII of 1934) and in the Indian Aircraft Rules, 1920, which will shortly be superseded by rules made under the new Act.

2. The Act is intended to provide for the control of the manufacture, possession, use, operation, sale, import and export of aircraft. It is administered under the orders of the Government of India by a Director of Civil Aviation, who is assisted at headquarters by a Deputy Director, a Technical Officer, and a Chief Inspector of Aircraft. The Act and rules cover a very wide field, but there are five main subjects :—

- (a) general conditions of flying ;
- (b) the registration and marking of aircraft ; the grant and renewal of certificates of airworthiness and the maintenance of log books ;
- (c) the licensing, inspection, and regulation of aerodromes ;
- (d) the licensing of persons employed in the operation, repair, or maintenance of aircraft ;
- (e) the investigation of accidents.

Head (a) covers a variety of subjects such as the prevention of dangerous flying ; the prohibition of the carriage of certain articles in aircraft, *e.g.*, arms ; rules for air traffic and the conditions governing the entry into and departure of aircraft from British India, *e.g.*, customs arrangements ; prohibited areas. To enforce compliance with the relevant rules, Government depend on the staff of the Civil Aviation Department and the local civil authorities.

Head (b). The registration and marking of aircraft are at present dealt with in the office of the Director of Civil Aviation and a centralized system is necessary for obvious reasons. For the grant and renewal of certificates of airworthiness, it is necessary to employ a staff of highly trained Inspectors. The staff employed in British India is at present small, and additions to it are being made. Inspectors or experienced Assistant Inspectors will, it is hoped, be posted during the next year or two to all important Civil Aviation centres.

Under (c), it should be noted that aerodromes need not necessarily be Government property. All the important aerodromes and landing grounds in British India are in fact owned by Government, but the Act and the rules permit the establishment of non-Government aerodromes and landing grounds under proper control. The Government of India provide a trained aerodrome staff consisting of a Chief Aerodrome Officer stationed at Karachi and a number of Aerodrome Officers and Assistant Aerodrome Officers. Wireless and meteorological facilities are necessary at all important aerodromes and are provided by Government. Lighting is also provided at aerodromes and on main routes where necessary.

Turning to (d), licences are granted after examinations which, in the case of "A" pilot's licences are comparatively simple and are conducted locally by recognised examiners. Higher qualifications, *e.g.*, the "B" pilot's licence, ground engineer's licences, and navigators' and wireless operators' licences require prolonged courses of training leading up to examinations conducted under the supervision of the Civil Aviation staff.

Head (e). When an accident occurs to aircraft and results in death or personal injury to any person, whether carried in the aircraft or not, or in serious structural damage, a report is required to be made to the Director of Civil Aviation who orders a preliminary investigation and appoints for the purpose an "Inspector of Accidents". On the Inspector's report, the Governor General in Council orders, if necessary, a formal investigation and, for the purpose, appoints a Court, with all the powers of a Civil Court under the Code of Civil Procedure, 1908, and assessors.

3. The scope of the obligations resting on the Government of India in regard to the regulation of air traffic in respect of public health can be seen from the provisions of the International Sanitary Convention for Aerial Navigation,

1933. This convention has not been ratified by the Government of India but they are taking steps to equip Karachi as an "anti-amaryl" port as a prerequisite to ratification.

#### **Effect of Federation.**

4. No new obligations in respect of Civil Aviation will apparently be imposed on a State which accedes to the Federation whether with or without reservations. The important subjects of registration of aircraft, licensing of personnel and supervision of the airworthiness of aircraft are already administered by the Government of India for the whole of India. This follows from the fact of India's membership of the International Convention of Air Navigation as a single contracting State, and the arrangements in the States are explained in Foreign and Political Department Resolution F. 150-R.31, dated 8th August 1932. The position will remain unchanged under Federation.

Indian States have at present certain rights secured to them by the Foreign and Political Department Resolution, dated 8th August 1932. Examples are :—

- (1) The right to declare prohibited areas after consultation with the British Government.
- (2) The right to declare customs aerodromes in preservation of their fiscal rights.
- (3) The right to reserve internal transport to their "national" aircraft.

As regards (1), this right has been withdrawn from local Governments in the Indian Aircraft Act, 1934. It would be withdrawn from States under a federal system, as declarations are of international importance and should be centralised.

As regards (2), this right would continue only as a concomitant of a continuing right to levy customs duties.

As regards (3), this right would probably be withdrawn under Federation, with a view to the free development of federal air routes. Incidentally there is, except for this special purpose of the resolution, no such thing as a "national" aircraft of an Indian State. Nationality follows the registration, which is Indian.

As regards the investigation of accidents, the Foreign and Political Department Resolution, dated 8th August 1932 requires the States to institute an enquiry, to invite an officer of the Government of India to attend the enquiry and to carry into effect any recommendations made by such officer. This obligation will cease in any State which accedes without reservation because the Federal Government will itself do all that is required. In fact the States are powerless now to carry into effect most of the recommendations which might be made by an investigating officer—as these relate to matters in which control rests with the Government of India.

The ground organisation, that is to say, aerodromes and landing grounds with the necessary staff, wireless and meteorological services and lighting and equipment, would be provided by the Federation to the extent required for federal needs. The Federation would not of course be responsible for ground organisation not considered necessary by the Federal Government, and if a State wished to establish and maintain an aerodrome for its own purposes, it would have to meet the expenditure itself. The Federal Government's right to supervise such aerodromes would remain as it exists at present under the Foreign and Political Department Resolution F. 150-R.31, dated 8th August 1932. In short, a State acceding without reserve would by reason of its accession incur no new obligation in respect of ground organisation.

**Item 25.—Lighthouses, including lightships, beacons and other provision for the safety of shipping.**

**A.—Legislation and Administration in British India.**

The Indian Lighthouse Act, 1927 regulates this subject in British India. As regards administration, it may be stated that the Act divides lighthouses into two classes :—

- (a) General lighthouses ;
- (b) Local lighthouses.

The criterion adopted in determining whether a lighthouse is a general one or not is whether it is of general benefit to passing trade, that is, of general benefit to ships other than those making for a particular port. General lighthouses are managed by the Government of India and are maintained from central revenues. Lightdues collected at British Indian ports are credited to central revenues. The Government of India at present appoint the staff necessary for managing General Lights and collecting the lightdues under the Indian Lighthouse Act.

Lights not declared as General Lights are designated Local Lights. The Government of India are not responsible for maintaining them but have powers of inspection and control. Grants-in-aid are given by the Government of India where it is established that Local lights are used by passing ships as well as by ships making for a particular port.

**B.—Effect of Federation.**

*If States accept this item, the Federal law will extend to their territory and their position in this matter will be the same as that of the Provinces of British India.*





**Item 26.—Carriage of passengers and goods by sea.**

This subject is to a large extent covered by the subject " Maritime Shipping and Navigation " and the remarks made in the note on the latter are also applicable to this subject. Mention may, however, be made of two Acts which relate more particularly to this item, *viz.*, the Indian Bills of Lading Act, 1856, and the Indian Carriage of Goods by Sea Act, 1925. These Acts regulate the responsibilities, liabilities, rights and immunities of carriers under Bills of Lading. The Indian Carriage of Goods by Sea Act, 1925, referred to, gives effect to the code of rules agreed upon at the International Conference on Maritime Law held in Brussels in October 1922 and October 1923.

*As regards the effect of acceptance of this item, the remarks against Maritime Shipping and Navigation including Shipping and Navigation on tidal waters under item 21 of the Federal Legislative list may be seen.*



Item 26.—Carriage of passengers and goods by air.

The law in force is the Indian Carriage by Air Act, 1934 (XX of 1934). This Act was passed to give effect to certain rules relating to international carriage by air contained in the Warsaw Convention of 1929. Under section 4, the rules may be applied to internal carriage by air, but no notification has yet been issued in British India. The Act regulates the relations between carriers, passengers and consignors and consignees of goods.

2. *The application of the Indian Carriage by Air Act, 1934 (XX of 1934) to internal carriage by air will not apparently involve the assumption of additional obligations either by British India or by the States.*

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**Item 27.—Copyright, inventions, designs, trade-marks and merchandise marks.**

**Copyright.**—The law governing this subject is contained in the British Copyright Act, 1911 (1 and 2 Geo. 5, ch. 46) as modified in its application to British India by the Indian Copyright Act, 1914. Such of the portions of the British Copyright Act as are applicable to India are set out in the First Schedule to the Indian Copyright Act.

2. There is no special machinery for the administration of the Indian Copyright Act. The fact that an original literary, dramatic, musical or artistic work is first produced in any part of His Majesty's Dominions to which the British Copyright Act applies automatically gives rise to the protection afforded by the Act and no registration or formal grant of copyright is required.

3. The term of copyright in a work is for the life of the author and a period of fifty years after his death and in the case of Government work for a period of fifty years from the date of the first publication of the work. In the case of works first published in British India copyright for translating such works subsists for ten years only. Importation of copies made out of British India of any work in which copyright subsists which if made in British India would infringe copyright can be prohibited on application of the owner of the copyright to the customs authorities. The enforcement of the provisions of the Act lies with the ordinary Civil Courts. So far as Indian States are concerned their ordinary civil courts may be relied upon to give the necessary remedies to aggrieved holders of copyrights.

4. *The British Copyright Act, 1911, by virtue of its section 25 applies to British India with the modifications and additions set out in the Indian Copyright Act, 1914. The British Act is not applicable to Indian States and there is no arrangement for reciprocity with British India and the Indian States in regard to the protection of copyright. Proposals were made to amend the Indian Copyright Act, 1914, by providing that the Governor-General in Council might extend the provisions of that Act to books published in any Indian State when he was satisfied that proper provision had been made in that State for the protection of works published in the British Empire. But the proposal was eventually dropped on account of legal difficulties as the Government of India had no independent right to legislate in the manner proposed. After Federation, it will be possible to secure uniformity within Federated India in the matter of copyright by taking advantage of section 26 of the British Act under which the Legislature of a self-governing Dominion may repeal any of the enactments relating to copyright passed by the British Parliament so far as they are operative within that Dominion. In conjunction with such a repeal, the Federal Legislature could enact a self-contained Copyright Act applicable to the whole of Federated India.*

**Inventions and Designs.**—The existing law governing the grant of patents for inventions and the registration of copyright in designs in British India is contained in the Indian Patents and Designs Act, 1911, as modified up to the 1st July 1930, the Indian Patents and Designs Rules, 1933, and the Indian Secret Patent Rules, 1933.

2. The law is administered by the Patent Office of the Government of India in Calcutta consisting of a Controller of Patents and Designs and 5 Examiners of Patents. The Patent Office acts under the superintendence and direction of the Governor-General in Council. Applications for the grant of patents together with necessary specifications, drawings, etc., and for the registration of designs accompanied by the prescribed fees are submitted to the Patent Office and if they comply with the requirements of the law a patent is granted or the design is registered. The term of a patent is sixteen years and that of copyright in a design 5 years which may be extended up to 15 years. In special cases an extension of the term of patents can also be granted.

3. The decisions of the Controller on various matters are subject to an appeal to the Governor-General in Council. High Courts have also jurisdiction in deciding applications for revocation of patents ; suits for infringement of patents are tried by District Courts.

4. Under the existing law reciprocal arrangements for the protection of patents and designs are permissible between British India and Dominions and Indian States provided satisfactory provision exists in such Dominions and States for the protection of inventions or designs patented or registered in

British India. Reciprocal arrangements exist with the United Kingdom, Ceylon, New Zealand, Canada, Australia, the Union of South Africa and the Irish Free State, and reciprocal arrangements with certain Indian States are contemplated.

5. *So far no reciprocal arrangements have been made with any Indian State and these arrangements affect only the dates of patents and do not relieve an inventor from the necessity of securing separate patents in British India and in the States. Consequently an invention or design which is protected in an Indian State can be freely used in British India, unless a patent is also taken out there. Conversely an invention patented in British India is not protected in an Indian State. Hyderabad, Mysore, Travancore, Marwar, Baroda, Cochin and Kashmir have their own patent offices and patent laws ; other Indian States have not yet got any law relating to patents and designs. Negotiations are in progress with the Mysore and Baroda States for reciprocal arrangements for protection in this matter.*

6. *On the establishment of the Federation the Federal Legislature could enact a Federal law for the grant of patents and registration of designs having validity throughout the Federation.*

**Trademarks and Merchandise marks.**—The present British Indian legislation consists of the Indian Merchandise Marks Act, 1889, and the Rules, framed thereunder. There is at present no separate trade marks Act in India. Protection to trade marks is however afforded partially by the Indian Merchandise Marks Act.

**Item 28.—Cheques, Bills of exchange, Promissory notes and other like instruments.**

At present in British India the Negotiable Instruments Act, 1881, regulates this subject.

2. The more important functions performed under the Act may be briefly summarised as follows :—

- (1) *Section 25*—to declare holidays as public holidays.
  - (2) *Section 138*—to appoint Notaries Public.
  - (3) *Section 139*—to make rules for the guidance and control of the Notaries Public.
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**Item 29.—Arms, firearms, ammunition.**

The present British Indian Legislation on this subject consists of the Indian Arms Act, 1878 and the Rules made thereunder. These sufficiently indicate the scope of this item.

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### Item 30.—Explosives.

The law governing this subject is the Indian Explosives Act, 1884 (IV of 1884), and, to a limited extent, the Indian Arms Act, 1878. These extend to the whole of British India.

The Indian Explosives Act gives power to the Governor-General in Council to prohibit, in the interest of public safety, the manufacture, possession or importation of specially dangerous explosives, to make rules for any part of British India regulating the manufacture, possession, use, sale, transport and importation of explosives and to confer powers of inspection, search, seizure, detention, and removal upon any Government servant. Rules have been framed under the Act by the Governor-General in Council to regulate the manufacture, possession, use, sale, transport, and importation of explosives and for the issue of licenses, on payment of a prescribed fee, for these purposes. The duty of granting such licenses in British India devolves mostly on the District officers of the local Governments.

The Act also empowers local Governments to make similar rules with the previous sanction of the Governor-General in Council, for any part of the territories under their administration. The rules so far made by local Governments only pertain to the regulation of transport of explosives at the ports.

The specially dangerous explosives the manufacture, possession and importation of which has been prohibited by the Governor-General in Council are acetylene, and explosives consisting of or containing sulphur or sulphurate in admixture with chlorate of potassium or any other chlorate.

Provision is made in the Act for notice of accidents connected with explosives to the police authorities and inquiry into such accidents by magistrates.

There is a saving for the manufacture, possession, use, sale, transport or importation of explosives by Government.

Penalties are provided for offences under the Act. Offences under the Act in British India are tried in the ordinary way by the Judicial Courts.

2. The working of the Act is supervised generally by the Central Department of Explosives consisting of the Chief Inspector of Explosives and 4 Inspectors of Explosives. These officers inspect the explosives magazines throughout British India. The duty of granting licenses under the Indian Explosives Rules devolves mostly on the District officers of the local Governments. The local police and magistrates also carry out inspection of explosives premises within their jurisdiction.

### Effect of Federation.

*On the acceptance of this item by a Federating State, the existing law will apply to the State to the extent and in the manner determined by an Act of the Federal Legislature and the Rules made by the Federal Government thereunder.*



**Item 3.—External affairs ; the implementing of treaties and agreements with other countries.**

**Item 31.—Opium, so far as regards cultivation and manufacture, or sale for export.**

The following are the international agreements and conventions affecting the control of dangerous drugs, including opium :—

- (1) International Opium Convention signed at the Hague, 1912.
- (2) International Opium Convention, Geneva, 1925.
- (3) International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931.

It is convenient to divide the consideration of these subjects into the following heads :—

- (i) import and export from and to foreign countries ;
- (ii) production in India ; and
- (iii) internal traffic.

(i) The subject of import and export of all the substances concerned is covered by the Dangerous Drugs Act, 1930.

(ii) The production of opium in British India is covered by the same Act read with the Opium Act of 1857. Production of the hemp drugs is left within the control of the Local Governments under Local Excise Acts. Production of manufactured drugs and of “ prepared opium ”, i.e., opium for smoking, is, again, covered by the Dangerous Drugs Act.

(iii) Internal traffic in opium and the hemp drugs is left to the Opium Act, 1878, and the Local Excise Acts, respectively ; while the internal traffic in manufactured drugs and “ prepared opium ” (the latter being prohibited) is controlled by the Dangerous Drugs Act, 1930.

The position broadly speaking is in line with the result flowing from our international obligations, but not entirely so. Government have undertaken strict obligations as regards the control of traffic between India and foreign countries. Government have not expressly undertaken by these international conventions the restriction of the production of opium ; but such restriction is a necessary implication of the undertakings they have given as regards the control of the export of opium, and Government may be said to be—morally speaking at least—under an obligation to restrict production to internal requirements and to medical requirements only outside India. Government are under no international obligation as yet to control in any way the production of hemp drugs for internal requirements ; but they are under strict obligations to control the production of manufactured drugs and the restriction of their use to medical needs. Apart from production, internal traffic in raw opium and hemp drugs is not directly affected by the international conventions apart from the very vague obligation imposed by Article I of the International Opium Convention, 1912, which binds Government to enact effective laws or regulations for the control of the production and distribution of raw opium unless laws or regulations are already in existence. There is no obligation at all as regards the use of hemp drugs.

To put the position as briefly as possible, internal traffic in the revenue-producing drugs (apart from “ prepared opium ”) is hardly affected by international conventions and is left to Provincial legislation ; the production of opium is a Central affair, but the production of hemp drugs is Provincial ; external traffic in these drugs is entirely a Central subject. Both external and internal traffic in manufactured drugs, non-revenue-producing, and also their production are treated as subjects of Central Legislation, although under the existing constitution the internal traffic is technically a Provincial subject. When the Dangerous Drugs Act of 1930 was passed this position was accepted by all the Local Governments in recognition of the stringent nature of the international obligations that bound us in connection with manufactured drugs. Under the new constitution, these manufactured drugs will become a subject of concurrent legislation, List III, item 19.

## B.—Effect of Federation.

*This recital may be somewhat tedious but it appears to be necessary before examining the legislative and executive position in the Federation. If item 3 "implementing of treaties, etc.", is accepted by all States without reservations, it will apparently bind the States to accept such degree of control as is necessary to secure that the conventions quoted are observed within their territories. So far as import and export are concerned, there is not much need for anxiety, and it will be necessary to ask a maritime State which accedes to federation to accept the Federal law on the subject of import and export of drugs and to accept such control as may be necessary to secure efficient application of that law. At present the only control Government can exercise otherwise than through moral pressure is by restriction at their own frontiers. If that control is in any way weakened, it will be necessary to substitute something effective at the ports of the maritime States. It is, of course, a fortunate accident that raw opium has no access to the sea from the areas of production except through British India.*

*The acceptance of item 3 without reservation will also bind the States to accept the Federal law controlling internal traffic in manufactured drugs. As regards internal traffic in opium and hemp drugs, the existing international obligations are, very shadowy and it should be quite easy for any State to accept them and reasonably safe to leave it to the State to prescribe and operate the necessary legislation.*

*The real difficulty arises in connection with item 31 dealing with the cultivation and manufacture of opium. States should in the first instance be asked to accept this subject without reservation as Federal; in which case the Federal Government would not only restrict cultivation to the quantity required for satisfying India's internal needs but would decide what quantity is to be produced, i.e., what area is to be cultivated in any individual State. Whether exceptions should be made and to what extent, compatible with entry into the Federation on the part of the States concerned, is a very difficult subject, and can be considered at a later stage.*

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**Item 32.—Petroleum and other liquids and substances declared by the Federal law to be dangerously inflammable, so far as regards possession, storage and transport.**

The administration of this subject is carried on under the provisions of the Petroleum Act, 1899. This Act will shortly be replaced by the Petroleum Act, 1934, which is not yet in force. The 1934 Act follows in its general principles the 1899 Act, the main difference being that rules under the new Act will be central.

2. The general scheme under the 1934 Act is as follows :—

- (1) No one may import dangerous petroleum, i.e., petroleum having its flashing point below 76° Fahrenheit and no one may transport or store any petroleum (excepting in the case of dangerous petroleum 6 gallons and in the case of non-dangerous petroleum small stocks not exceeding 500 gallons at any one place) without obtaining a license in accordance with the conditions set down in the rules.
- (2) Rules will be made by the Governor-General in Council prescribing
  - (i) places where alone petroleum may be imported ;
  - (ii) forms and conditions of licenses for the import of dangerous petroleum and for the transport and storage of any petroleum ;
  - (iii) the conditions subject to which petroleum may be produced, refined or blended ; and
  - (iv) other ancillary matters connected therewith.
- (3) Provision is made for inspection, sampling and testing of petroleum by officers specially authorised for the purpose.
- (4) No license is needed by railway administrations acting as carriers.
- (5) The Governor-General in Council is empowered to exempt specific petroleum from all or any of the provisions relating to import, transport and storage and the Act is not applicable to petroleum having its flashing point not below 200° Fahrenheit.
- (6) Reports of accidents with petroleum are required to be made to the nearest magistrate or to the officer in charge of the police station and an inquiry into an accident, which is attended by death, is made compulsory. Inquiry may also be held in the case of a non-fatal accident if it was attended by a serious injury to persons or property at the discretion of specially empowered magistrates.
- (7) Penalties are provided for offences under the Act.

3. Under the Rules to be made under the Petroleum Act, 1934, licenses will be required for the importation of dangerous petroleum and for the storage of any petroleum, dangerous or non-dangerous, exceeding certain specified limits. Such licenses will be issued, on payment of a prescribed fee, by authorities empowered in this behalf. It is intended that these authorities should be, in the case of large installations or storage sheds, the Chief Inspector of Explosives and in the case of small storage sheds the District Magistrates.

4. The supervision of the working of the law relating to petroleum and other dangerously inflammable substances rests generally with the Department of Explosives whose officers inspect petroleum premises throughout British India ; the local police and magistrates also carry out inspection of petroleum premises within their jurisdictions. The duty of granting licenses devolves in most cases on the District officers of the local Governments.

**Effect of Federation.**

*On the acceptance of this item by Federating States and the extension of the necessary Federal law to Federating States, all petroleum premises in their territories will, if the competent federal authority so determines, be subject to inspection by the officers of the Explosives Department and by such other officers as may be authorised by the Federal Government.*





**Item 33.—Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, etc.**

1. The present British Indian legislation under this item consists of—

1. The Indian Companies Act, 1913,

2. The Indian Companies (Amendment) Act, 1930, and

3. The Rules issued thereunder, namely,

The Indian Companies Rules, 1914, the Auditor's Certificates Rules, 1932, and the Restricted Certificates Rules, 1932. While the Indian Companies Act is administered by the local Governments in the Provinces as an agency subject, the Government of India themselves administer the portions of the Act and the Rules relating to the issue of certificates to persons entitling them to be appointed and to act as auditors of companies in British India.

2. If the States which enter the Federation accept, in the Instruments of their Accession, the Legislative and executive authority of the Federation in respect of this item, they will be obliged to accept the Federal enactments relating thereto and will be governed thereby.

3. It will be essential for the sake of uniformity in administration that the control of enrolment of persons on the Register of Accountants and the issue to them of Auditor's certificates should be in the hands of the Federal Government. Acceding States will have to recognise the certificates granted by the Federal Government and execute the decisions of the Federal Government in this connection.



**Item 34.—Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.**

Under the Devolution Rules, “development of industries” is a Central subject in cases where such development by Central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, to be expedient in the public interest. (Item 20 of Part I, Schedule I, to the Rules). Except in so far as such orders are issued the subject is Provincial and Transferred. (Item 16 of Schedule II to the Rules). So far only two industries, the steel rail and railway wagon industries in certain provinces, have been declared to be Central subjects and the Steel Industry (Protection) Act, 1924, was passed with a view *inter alia* to afford assistance to these two industries by means of bounties. This Act, which was in force for three years, was repealed in 1927 and the assistance afforded to the two industries by means of bounties was withdrawn. There is thus no legislation in force at the present moment authorising expenditure of central revenues in provinces on these two industries and, if the position remains as at present, the Federation will start with no obligations in respect of this subject.

2. Under the Government of India Act, 1935, “development of industries” will primarily be a Provincial subject, except where development of any particular industry is declared by Federal law to be under Federal control. (Item 29 of the Provincial Legislative list). If as a measure of protection, a bounty is given to any industry declared by Federal law to be under Federal control, units of that industry within Federating States will be eligible for the bounty if they fulfil the conditions prescribed.

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### Item 35.—Regulation of labour in mines ; safety in mines and oilfields.

The law regulating labour and safety in mines is contained in the Indian Mines Act, 1923, as amended by the Indian Mines (Amendment) Act, 1935. The Act is operative in respect of nearly all mines, quarries and excavations except shallow ones where few persons are employed.

The prescribed maximum hours of work for labour employed in mines are :—

(1) Underground .. .. 9 hours a day.

(2) Above ground .. .. 10 hours a day.

(with a maximum spreadover of 12 hours).

In any week for both (1) and (2) .. .. 54 hours.

The Act provides for the grant to persons employed in mines of a weekly holiday, intervals for rest above ground, the maintenance of a register of workers showing the nature of their employment and periods of work, etc., and prohibits the employment of persons under 15. The Act further provides for the appointment of a manager for each mine and for notices to be given of mining operations and of accidents. The Governor-General in Council and, on the occurrence of a public emergency, the Local Governments are empowered to exempt either absolutely or subject to any specified conditions, any local area or any mine or group of mines or any class of persons from the operation of all or any specified provisions of the Act.

2. The administration of the Act rests partly with the Central Government through the Department of Mines and partly with the local Governments to whom certain important administrative functions have been allotted. The Act empowers local Governments to frame rules relating to the constitution of Mining Boards consisting of the representatives of Government, the mine owners and the miners, and courts of inquiry into accidents, supply of water and medical appliances at mines, sanitation, conservancy, etc. Similar powers are exercised by District Magistrates within their respective jurisdictions subject to the general or special orders of the local Government. The Governor-General in Council is empowered to make regulations prescribing the powers and duties of the inspecting staff, the qualifications of managers of mines, the regulation of the employment of women (their employment underground is generally prohibited) and regarding all technical matters concerning the safety of persons employed in mines. Responsibility for the due observance of the provisions of the Act and the regulations etc., framed thereunder rests with the owner, agent and manager of a mine and penalties are provided for breaches thereof.

The Department of Mines is wholly maintained by the Central Government and its officers carry out inspection of mines throughout British India. The present strength of this Department consists of—

Chief Inspector	..	..	..	..	1
Inspectors	..	..	..	..	3
Electrical Inspector	..	..	..	..	1
Junior Inspectors	..	..	..	..	4
Assistant Inspectors	..	..	..	..	2

3. Offences under the Act are tried by Courts not inferior to the Court of a Presidency Magistrate or a Magistrate of the First Class.

#### Effect of Federation.

*On the acceptance of this subject by a State and the extension of the necessary Federal law to Federating States, federal laws and regulations will supersede all existing legislation of the States repugnant to the federal laws. The authority of the officers of the Indian Mines Department will, to the extent determined by the competent Federal authority, extend to the territories of the Federating States.*



**Item 36.—Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.**

Under the existing constitution “ Development of mineral resources which are Government property subject to rules made or sanctioned by the Secretary of State ” is a provincial subject, while “ Control of mineral development in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State ” is a Central subject. The control exercised at present by the Government of India in the development of mineral resources lies in :—

- (1) the general power of superintendence, direction and control which they possess over Local Governments in regard to Provincial Reserved Subjects (as far as the subject of Mineral Development is concerned this control is only a kind of reserved power and has rarely been exercised), and
- (2) the control reserved to the Governor-General in Council under the rules framed by the Secretary of State in Council which are known as the “ Mining Rules ”. This control operates only in a very limited class of cases, *cf.* Mining Rules’ 47, 53 and 54.

All the other powers under the rules are exercised by the Local Governments (including minor administrations) whose power of action in the matter of granting concessions is limited only by the terms of the rules.

2. In Foreign and Political Department Resolution No. 1130-445-Int., dated 12th July 1923, the States, the Rulers of which are members of the Chamber of Princes in their own right, were invited by the Government of India in the interests of the Empire and their own interests—

- (a) in dealing with “ essential minerals ” to adopt the general policy embodied in the Government of India Rules for grant of prospecting licenses and mining leases ; and
- (b) in respect of all minerals to impose such restrictions regarding the nationality of concessionaires as may be imposed in British India.

Essential minerals, *i.e.*, those necessary for key industries or other Imperial purposes in war time, were described in the resolution as follows :—

aluminium, chromium, copper, manganese, molybdenum, nickel, platinum, tungsten, zinc, coal, magnesite, mica, petroleum, and sulphur.

In the case of other States and estates, specially those which, under the terms of their Sanads, are bound to consult the political authorities in mining matters, it was laid down that the principles embodied in the resolution may be followed to such extent as the Government of India may consider desirable.

3. In the Seventh Schedule to the Government of India Act, 1935, the following entries appear :—

- (1) *List I—Federal Legislative List.*—“ 36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.”
- (2) *List II—Provincial Legislative List.*—“ 23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.”

The subject under the new constitution will therefore be Provincial except to the extent it is brought under Federal control by a Federal law. At present there is no central legislation on this subject and it is premature to say to what extent it may be brought under Federal control.





**Item 37.—The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business.**

**A.—Legislation and Administration in British India.**

The administration of 'Insurance' in British India is regulated at present by the following Acts of the Indian Legislature :—

1. The Indian Life Assurance Companies Act, 1912, and the Rules made thereunder by the Governor-General in Council ;
2. the Indian Insurance Companies Act, 1928 ; and
3. the Provident Insurance Societies Act, 1912 and the Rules made thereunder by the local Governments.

The first two Acts, which are administered by the Government of India, require insurance companies carrying on life assurance business and other insurance business in British India to furnish the Governor-General in Council with their accounts, balance sheets and other statements and in the case of life assurance companies, to furnish valuation statements and to make a deposit with the Controller of the Currency in the manner laid down in Section 4 of the Indian Life Assurance Companies Act, 1912. The Accounts are examined by the Actuary to the Government of India and his staff and it is through this examination that control is exercised over the working of insurance companies. The deposit of the accounts, etc., and their examination by an experienced Actuary constitute the two main elements in the administration of the subject.

The Provident Insurance Societies Act, 1912, regulates the conduct of business by such societies. The Provincial Governments are at present the statutory authorities and administer the Act in the Provinces.

**B.—Effect of Federation.**

*Federal Legislation will apply to British India and the Federated States, subject of course in the case of the latter to their Instruments of Accession. The insurance companies likely to be affected by federal legislation will fall under the following four classes :—*

- (1) *Insurance companies constituted in British India and transacting business within and outside British India but not in any Federated State,*
- (2) *Insurance companies constituted outside British India, other than in a Federated State, and transacting business in and outside British India but not in any Federated State.*
- (3) *Insurance companies constituted either in British India or outside British India, other than a Federated State, and transacting business within British India and in a Federated State.*
- (4) *Insurance companies constituted in a Federated State and transacting business in the Federated State and in British India.*

*In the case of provident insurance societies legislation will probably continue to be central.*



**Item 38.—Banking, that is to say, the conduct of banking business by Corporations other than Corporations owned or controlled by a Federated State and carrying on business only within that State.**

At present in British India the following Acts of the Indian Legislature regulate this subject :—

The Bankers' Books Evidence Act, 1891.

The Indian Companies Act, 1913.

2. The more important functions performed under these Acts may be briefly summarised as follows :—

*The Bankers' Books Evidence Act, 1891.*

- (1) *Section 3*—to extend the provisions of the Act to the books of partnerships or individuals carrying on the business of bankers.

*The Indian Companies Act, 1913.*

- (2) *Section 3 (1)*—to empower district courts to exercise jurisdiction under the Act.
- (3) *Section 11 (4)*—to approve changes in the names of companies.
- (4) *Section 26*—to grant licenses to associations to be registered as companies with limited liability without the addition of the word "limited" to their names.
- (5) *Section 138*—to appoint inspectors to investigate the affairs of companies in certain circumstances (*vide* also sections 139 and 141).
- (6) *Section 144*—to make rules for the grant of certificates entitling the holders to act as auditors of companies.
- (7) *Section 246*—the High Court to make rules concerning proceedings for the winding up of companies.
- (8) *Section 248*—to appoint Registrars and Assistant Registrars for the registration of companies and to make regulations with respect to their duties, fix their salaries, etc.

It may be mentioned that the Indian Companies Act is at present under revision.



**Item 39.—Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.**

At present this subject is controlled by the Indian Police Act, 1888. It does not affect Indian States except in so far as the Act may be applicable through any notification under the Foreign Jurisdiction Order in Council in respect of administered areas.



**Item 42.—Offences against laws with respect to any of the matters in this list.**

*This item was included in the Federal Legislative List so as to preclude the Federation from legislating for punishments in respect of provincial subjects. One consequence of such inclusion, however, if a State were to be allowed to accede to the Federation without accepting item 42, is that the Federation, although able to legislate in that State for subjects accepted by the State, would not have power to create offences and impose punishments in respect of those subjects. This anomaly must, therefore, be avoided by the inclusion of item 42 in all Instruments of Accession.*

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**Item 43.—Inquiries and Statistics for the purposes of any of the matters in this list.**

This entry covers all inquiries and statistics that may be necessary for the purposes of legislation on federal subjects or their administration.

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**Item 45.—Duties of excise on tobacco and other goods manufactured or produced in India.**

The following are the British Indian Acts relating to excise duties covered by this item :—

1. Motor Spirit (Duties) Act, 1917.
2. Section 5 of the Indian Finance Act, 1922, which applies the Motor Spirit (Duties) Act to kerosene.
3. Silver Excise Duty Act, 1930.
4. Sugar (Excise Duty) Act, 1934.
5. Matches (Excise Duty) Act, 1934.
6. Mechanical Lighters (Excise Duty) Act, 1934.
7. Iron and Steel Duties Act, 1934.

*As in the case of customs, both the law and the administration of this subject should in theory be Federal, but it may not be necessary to insist on the acceptance of a Federal agency for the administration of all the excise duties. The agency for the administration of the duties on motor spirit and kerosene, silver, and iron and steel will probably have to be exclusively Federal. On the other hand the States may be able to use their own agency, if they so desire, for the administration of the duties on sugar, matches and mechanical lighters, and of any duties which may in future be imposed on tobacco. It must, however, be emphasised that this can only be permitted if the States are prepared to accept the minimum demands specified under " Customs ".*

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#### Item 46.—Corporation Tax.

At present there is no such tax as corporation tax but companies in British India are liable to supertax in accordance with the provisions of Chapter IX of the Indian Income Tax Act, 1922. The present intention is to change its name to "corporation tax".

2. The scope of federal legislation on this item has been definitely limited by the definition of "corporation tax" in Section 311 (2) of the Act. This definition is intended to include a tax of the nature of the existing Indian supertax on companies and to exclude a tax like the Indian Income-tax which while in form is levied on companies, is really in effect passed on to the personal assessment of the shareholders.

3. *The control and administration of the tax will be entirely federal. If any State is unwilling to admit the Federal agency for this purpose, it would be open to it to adopt the alternative allowed by Section 139 (2) and (3) of the Act.*





**Item 47.—Salt.**

The following are the British Indian laws on this subject :—

- (1) Indian Salt Act, 1882.
- (2) Transport of Salt Act, 1879.
- (3) Indian Salt Duties Act, 1908.
- (4) Salt (Additional Import Duty) Act, 1931.

The following Provincial Acts have already been amended so as to vest all authority in the Central Government (except in Sind) and will doubtless continue in force as Federal Acts :

- (1) Madras Salt Act, 1889.
- (2) Bombay Salt Act, 1890.

As the Davidson Committee pointed out, the Government of India have been able, by means of agreements with most of the salt producing States, to establish a practical monopoly of the production of salt, and this has made it possible to remove all the preventive barriers previously maintained against the States except those on the frontiers of Kathiawar and Cutch. Federation is thus more nearly an accomplished fact in connection with salt than in connection with any other subject.

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**Item 49.—Naturalisation.**

In British India this subject is regulated by the Indian Naturalisation Act, 1926. Under this Act, Local Governments have full powers in regard to the grant and revocation of naturalisation certificates.

*The acceptance of this subject will not throw any obligation on the States and their power to make laws for naturalisation within the States is unaffected.*

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**Item 50.—Migration within India from or into a Governor's Province or a Chief Commissioner's Province.**

Inter-provincial migration is, under the existing constitution, a central subject—*vide* item 29 in Part I of Schedule I to the Devolution Rules. No restriction of any kind has been placed on the movement of persons from province to province in British India, except in regard to *assisted* emigrants from certain provinces to the tea estates in the following districts and tracts in Assam :—

Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara, Cachar, Sylhet and the Balipara, Lakhimpur and Sadiya Frontier Tracts.

The Act regulating such emigration is the Tea Districts Emigrant Labour Act, 1932 (XXII of 1932). An *assisted* emigrant means an adult who is given or offered any money, goods or ticket for conveyance as an inducement to proceed to Assam to work as a labourer on a tea estate. The Act extends to the whole of British India but under Section 16 of the Act the control of labour to the tea districts in Assam is at present limited to the Presidencies of Madras and Bengal (except the Hill Tracts of Chittagong), the United Provinces, Bihar and Orissa, the Central Provinces and Assam. These provinces, excepting Assam, are known as controlled emigration areas. No restrictions are imposed upon emigration from other provinces (*e.g.*, Bombay, Punjab, Delhi, North-West Frontier Province) to the tea districts. But the restrictions imposed by the Act are applicable to emigrants who proceed from an Indian State into a controlled emigration area and depart therefrom for Assam.

2. The administration of the Act is largely in the hands of the local Governments who act as the agents of the Government of India in the matter. Under the Act it is necessary in controlled areas to issue licenses to local forwarding agents and others engaged in forwarding emigrants ; to provide for the supervision of forwarding arrangements and recruitment and to enforce, in general, all the requirements demanded by the Act, *e.g.*, submission of reports, returns and maintenance of registers. Local Governments appoint, under the power vested in them by the Act, District Magistrates, or Sub-Divisional Magistrates and medical officers not below the rank of Assistant Surgeons for the purposes enumerated above. The Act empowers the Governor General in Council to appoint a Controller of Emigrant Labour and Deputy Controllers of Emigrant Labour. So far a Controller only has been appointed with the necessary ministerial staff. His headquarters are in Shillong. The Controller is responsible for the enforcement of the law relating to repatriation (this power is also exercisable by the District Magistrates in Assam), the supervision of the forwarding routes and the supervision of the conditions in the controlled areas.

3. The Tea District Emigrant Labour Act, 1932, will not impose any obligations on Indian States which accede to the Federation until a State, or a certain area in a State, is declared by the State to be a controlled emigration area. On this action being taken, it becomes incumbent on the State or on an authority of the State equivalent to a District Magistrate empowered by it in this behalf, to grant licenses to persons to act as local forwarding agents in any part of a controlled emigration area on behalf of employers of labour. In certain circumstances the authorities granting the licenses may cancel licenses wholly or in part. For the administration of the Act in controlled emigration areas it will be necessary for States to frame rules—

- (a) prescribing the form and particulars of licenses to be granted and the annual fees to be levied for granting licenses ;
- (b) prescribing returns to be submitted by local forwarding agents and the registers, etc., which should be maintained ;
- (c) prescribing the scales of diet to be provided for assisted emigrants and their families at depots ;
- (d) prescribing the accommodation which should be provided for assisted emigrants, etc., at depots and the sanitary and medical arrangements at such depots ;

- (e) *providing for the detention at local forwarding agents' depots of women unaccompanied by their husbands who propose to proceed to Assam as assisted emigrants, and for investigation into their circumstances ;*
- (f) *prescribing the information which should be supplied by local forwarding agents to assisted emigrants regarding the conditions of life and work on tea estates and the methods in which it should be supplied ; and*
- (g) *providing for any other matter which, in the opinion of the State, is necessary to give effect to the provisions of the Act in respect of the controlled emigrant area.*

*Arrangements will also have to be made by States for the inspection of local forwarding agents' depots and of vessels, trains or vehicles on which assisted emigrants are travelling. In British India these duties are performed by the Civil Surgeon or the District Magistrate or any magistrate or police officer not below the rank of Inspector.*

*4. Controlled emigration areas may be subjected to further control. A State may declare such an area or part of it to be a restricted recruiting area and thereupon it will be necessary for an authority equivalent to a District Magistrate to grant a license to any person to act as recruiter in the whole or any part of his district. The State will also have to issue rules—*

- (a) to regulate the procedure in granting such licenses, and*
- (b) to prescribe the form and particulars of such licenses and the fees to be paid therefor.*

*The duty of cancellation and suspension of a recruiter's license devolves on the District Magistrate, as also the cancellation of garden-sardar's certificates granted by owners or managers of tea estates under the rules framed by the Government of Assam. The Controller of Emigrant Labour appointed by the Governor General in Council under the Act is empowered inter alia to detain and return any sick persons proceeding to a tea garden in Assam and to order the provision of medical treatment to them. In the event of the arrangement for medical treatment or detention made by the employing interest being unsatisfactory he may make such arrangements himself and recover the cost from the employing interest. He is also empowered to return persons who have been recruited otherwise than in accordance with the provisions of the Act. Under the Act these powers may be delegated to District Magistrates or Sub-Divisional Officers and medical officers not below the rank of Assistant Surgeons, and States may find it necessary to delegate similar powers to their officers of corresponding status.*

**Item 53.—Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list, etc.**

*In order to secure a uniform method of enforcement of Federal laws, the Federal Government should have power to confer jurisdiction on and define the powers of all Courts in Indian States dealing with matters arising from the application and administration of Federal laws in Indian States, especially when the administration of a Federal subject is not made over to a State Agency. Hence the adherence of States under item 53 is essential.*

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**Item 54.—Taxes on income other than agricultural income.**

The British Indian Acts are :—

- (1) The Indian Income-tax Act, 1922 ;
- (2) Government Trading Taxation Act, 1926 (III of 1926).

*Any State that accepts this item should be prepared both to accept the Federal law and to allow the subject to be administered by the Federation.*

*In accepting this subject a State will, with it, accept the stipulation contained in section 138 of the Act, which secures for the Federation the unconditional enjoyment of taxes payable in respect of “ Federal emoluments ” as there defined.*





**Item 55.—Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.**

**Item 56.—Duties in respect of succession to property other than agricultural land.**

These taxes do not at present exist in British India unless certain stamp duties are regarded as being of the nature of duties in respect of succession to property. If such taxes should be introduced in future both the law and the administration would have to be exclusively Federal.

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**Item 57.**—The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

**A.—Law and Administration in British India.**

The British Indian Legislation on this subject consists of the Indian Stamp Act, 1899, and the Rules made thereunder by the Governor-General in Council and by the Local Governments. The actual administration of the Act has been entrusted to the Provincial Governments.

**B.—Effect of Federation.**

*This item should be read with item 13 in the Concurrent Legislative List and item 51 in the Provincial Legislative list. The stamp duties specifically mentioned in the Federal list are duties which it is desirable to maintain at a uniform level throughout India. Acceptance of item 57 will mean that the Federal Legislature will have the exclusive right to legislate with regard to these duties. Under Section 137 of the Act the proceeds of the duties will not be retained by the Federation but will be assigned to the Provinces and the Federated States, if any, within which they are leviable. The Federation will, however, have the right to impose a surcharge for federal purposes.*

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**Item 58.—Terminal taxes on goods or passengers carried by railway \* \* \* ;  
taxes on railway fares and freights.**

Terminal taxes on goods or passengers carried by railway by means of a surcharge on railway freights and fares have hitherto been levied in accordance with the provisions of certain provincial legislative enactments. Local Governments have power to sanction terminal taxes, except a tax on railway passengers, without the intervention of the Government of India, save in the case of municipalities where octroi was not levied on or before the 6th July 1917. Terminal taxes, particularly on goods or passengers are in many cases recovered by Railway Administrations on behalf of local bodies such as municipalities, district boards, etc., under arrangements mutually agreed to.

*It is intended that the power of Federal Units to levy such taxes should be subject to the control of the Federal Government and Legislature, as the imposition of such taxes on railway traffic not only encroaches on the limits within which Railway Administrations can alter existing fares and rates, but also throws the onus and odium of collecting taxes on to the Railway instead of on the local body or other administration on whose behalf the tax is collected.*

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